IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8526 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CENTRAL PULP MILLS EMPLOYEES UNION - Petitioner(s)

Versus

CENTRAL PULP MILLS LTD & 1 - Respondent(s)

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Appearance :

MRS SANGEETA N PAHWA for Petitioner(s) : 1,
MR DEVANG NANAVATI WITH MR DEEPAK SHUKLA FOR NANAVATI & NANAVATI for Respondent(s) : 1,
MR PD BHATE, AGP, for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/10/2005

ORAL JUDGMENT

In this petition, the petitioner, Central Pulp Mills Employees Union (hereinafter to be referred to as “the petitioner Union”) has challenged the legality of an

order passed by the Industrial Tribunal on 10th April 2003, by which while accepting the preliminary contention of the respondent-employer, the reference raised at the instance of the petitioner-Union came to be rejected. The Industrial Tribunal was pleased to accept the preliminary contention raised by the respondent. The reference was rejected on two grounds. Firstly it was observed that the Conciliation Officer sent a communication to the respondent on 21.5.01 pertaining to the demand notice of the petitioner. It was observed that immediately, the Conciliation Officer came to the conclusion that the respondent has not adopted a conciliatory approach. Ultimately, failure of conciliation was recorded and report submitted to the appropriate Government. The Industrial Tribunal found that when the communication was sent on 21.5.01 through registered AD, on the same day it was not possible to conclude that the respondent has not adopted conciliatory approach. Second ground on which the reference came to be rejected was that the reference was made by the Deputy Labour Commissioner in purported exercise of powers under a notification dated 21st April 1982 issued by the State Government. According to the Industrial Tribunal, the true interpretation of the notification empowering the

Deputy Labour Commissioner to make reference would not include the present case and reference was therefore not properly made. On these twin grounds, the reference came to be rejected.

2. Insofar as the first ground is concerned, learned advocate Mrs.Pahwa appearing for the petitioner Union pointed out that on 9.8.01 both the parties were present before the Conciliation Officer and the proceedings were thereafter adjourned to 13.9.01. On 13.9.01, the respondent Company was not present and therefore settlement could not be arrived at. On 5.10.01 notice was issued and the matter was kept for discussion on 18.10.01. On 18.10.01, representative of the Union was present, but no one was present on behalf of the respondent Company before the Conciliation Officer. The Conciliation Officer, therefore, sent his failure report. She, therefore, and in my view correctly, pointed out that there were proper conciliation proceedings. The Conciliation Officer had made attempts to bring about an amicable solution, however, same could not be arrived at. Insofar as the failure report is concerned, therefore, I do not find that the same was defective in any manner. Learned advocate Shri Nanavati appearing for

respondent No.1 employer has also did not seriously contest this question nor could he point out that the averments made by the petitioner in para 3.6A of the petition are factually incorrect. In that view of the matter, the conclusion of the Industrial Tribunal that the report of the Conciliation Officer suffered from legal defect cannot be sustained.

3. Second question is with respect to the competence of the Deputy Labour Commissioner to make a reference in purported exercise of delegated powers conferred under notification dated 21st April 1982 issued by the State Government.

4. Before examining the contents of the notification and interpreting the same, it would be useful to note the exact nature of controversy sought to be adjudicated upon through the reference proceedings. Through the petitioner Union, 186 workmen who are engaged by respondent No.1 through contract labour system have been agitating the question of their regularization first with respondent No.1 and thereafter before the Conciliation Officer and eventually before the Industrial Tribunal in the above-mentioned reference. At

the instance of the petitioner Union, reference in following terms came to be made :

> “Whether the workmen whose names are mentioned below are required to be treated as permanent workmen of Central Pulp Limited from the date they are working for the company and should be paid pay, dearness allowance and other allowances and other benefits as are being paid to the permanent workers from the said date.”

Below the said schedule, one finds a list of 186 workers.

5. In exercise of powers conferred under section 39 of the Industrial Disputes Act, the State Government has issued a notification and directed that the powers exercisable by it under sub-section (1) of section 10 and sub-sections (4) and (5) of section 12 of the Industrial Disputes Act shall in relation to matters specified in the schedule annexed with the notification in respect of all industries be exercisable also by all the Deputy Commissioners of Labour in whole of the State of Gujarat. Schedule to the said notification reads as follows:-

SCHEDULE

(1) All Industries	1) Any of the matters specified in the second schedule to the said Act except the matter specified at item No.3 of the said Second Schedule, affecting any individual workman. 2) Any of the matters specified in the third schedule to the said Act, except the matters specified at item Nos.9, 10, and 11 of the said Third Schedule, affecting any individual workman.
2) All Industries employing not more than 100 workmen but excluding public sector undertakings and Industries carried on by or under the authority or any department of the Central Government or State Government.	1) Any of the mattes specified in the second schedule to the said Act, except the matter specified at item No.3 of the said Second Schedule. 2) Any of the matters specified in the Third Schedule to the said Act,, except the matters specified at item Nos.9, 10, and 11 of the said Third Schedule.

6. The bone of contention between the parties is regarding the true interpretation of the above mentioned schedule and the entries made therein. In fact, in view of the uncontroverted factual aspects of

the matter, the discussion can be substantially narrowed down. It is not in dispute that respondent No.1 Company employs more than 100 workers and that therefore item No.2 in the schedule is not applicable. The entire discussion before me has been with respect to item No.1 in second column of the said Schedule pertaining to all industries which reads as follows:

> "Any of the matters specified in the second schedule to the said Act except the matter specified at item No.3 of the said Second Schedule, affecting any individual workman."

If one adverts to the second schedule to the ID Act, the same contains several entries. Entry No.6 therein reads "all matters other than those specified in the Third Schedule".

7. On the basis of the above entry in the Schedule to the notification dated 21st April 1982, learned advocate Mrs.Pahwa submitted that since the issue involved is not specified in the Third Schedule to the Industrial Disputes Act, by virtue of entry No.6 in the Second Schedule, the same would be covered under the second Schedule to the Industrial Disputes Act. In turn, therefore, the subject matter is such with respect to

which the Deputy Labour Commissioner has been given delegated powers to make a reference by the State Government by virtue of notification dated 21st April 1982. It is her contention that the issue involved affects individual workman though the same is sought to be raised by the Union. She, therefore, submitted that the order passed by the Deputy Commissioner of Labour referring the dispute for its adjudication was just and proper.

8. On the other hand, learned advocate Shri Nanavati appearing for respondent No.1 submitted that the true interpretation of group of words “affecting any individual workman” would mean that the dispute should be such which does not cover large number of workmen or a group or section of workmen and touches only a few individual workmen. He submitted that in the very nature of things, any dispute which is sought to be raised and is required to be referred for adjudication would affect an individual workman. Such literal interpretation would, therefore, render the term otiose and would leave no distinction between two entries made in the said notification wherein the Government has sought to distinguish between the industries employing

not more than 100 workmen and between all industries regardless of the size of the work-force.

10. Learned AGP Shri Bhate sought to support the decision of the Deputy Labour Commissioner on the strength of the affidavit in reply filed by respondent No.2.

11. Having considered the rival submissions, one has to have a closer look at the entries made in the Schedule to the notification dated 21.4.82. It can be seen that there are two separate provisions made, one for all industries and other for all industries employing not more than 100 workmen but excluding public sector undertakings and industries carried on by or under the authority of any department of the Central Government or State Government. So far as the powers of the Deputy Labour Commissioner which have been assigned to him by the notification delegating such powers of the State Government are concerned, between two entries, one significant and perhaps the sole difference is that with respect to all industries, such powers can be exercised if dispute is one affecting any individual workman whereas in case of industries employing not more than 100

workmen and public sector undertakings and industries carried on by or under the authority of any department of the Central Government or State Government, delegated powers can be exercised for the very same purpose but without stipulation that such dispute having to be one affecting any individual workman. The intention and the distinction appear to be clear. Insofar as the industry employing less than 100 workmen and other than those which are public sector undertakings and industries carried on by or under the authority of any department of the Central Government or State Government is concerned, Deputy Labour Commissioner has unrestricted power to make reference regarding subject matters specified in the second schedule. Whereas on the other hand, with respect to all industries which would also include industries employing more than 100 workmen as also public sector undertakings and industries carried on by or under the authority of any Department of the Central Government or State Government, in such cases, the Deputy Labour Commissioner could exercise powers for making reference in the subject matters specified therein, but so long as the dispute affects any individual workman. The important factor is that the dispute should be one affecting any individual workman. Without this necessary

element being present, the Deputy Labour Commissioner would have no power to make a reference under notification dated 21.4.82. It may be noted that the learned AGP Shri Bhate after taking necessary instructions stated before the Court that after the issuance of notification dated 21st April 1982 in this regard, the State Government has not issued any further notification. In any case, the Deputy Labour Commissioner has exercised powers under the said notification and no other notification is sought to be relied upon.

12. In the facts of the present case, it can be seen that dispute was whether 186 workmen who are employed by respondent No.1 through a contract labour system should be regularised or not. In other words, the case of the workmen concerned sought to be espoused through the Union is that the contract labour system sought to be employed is a sham arrangement and in reality, the workmen have been engaged directly by the Company and their services are therefore required to be regularised and they should be made permanent employees of the Company with all necessary benefits being paid to them from the date of their engagement. In that sense, the entire dispute was

a collective dispute affecting large number of workers. In fact, the dispute affects all workers who were employed through a particular contractor. In the sense of the term, this is not a dispute which affects only an individual workman. Indirect effect of the possible outcome of the dispute may be on individual workman so far as the service conditions are concerned. In the sense the term “affecting any individual workman” as used in the schedule to the said notification dated 21th April 1982, the dispute in question cannot be categorized as one affecting any individual workman. The literal interpretation of the group of words “affecting any individual workman” would render the entire distinction redundant and meaningless. As noted earlier, the intention of the State Government appears to be to divide the powers of the Deputy Labour Commissioner for making reference according to the industry in which the dispute arises. For industries employing not more than 100 workmen, the Deputy Labour Commissioner enjoys the power to make a reference without any stipulation so long as the subject matter is one which falls in the entries to be found in the schedule to the notification. Here also exception is made to the effect that such powers cannot be exercised with respect to public sector undertakings

and industries carried on by or under the authority of any department of the Central Government or State Government. On the other hand, for all industries, including those employing more than 100 workmen, public sector undertakings and industries carried on by or under the authority of any department of the Central Government or State Government, the Deputy Labour Commissioner can exercise powers of making reference only if the dispute falls within the parameters of the entries made in the schedule and further that the subject matter is such which affects any individual workman.

13. Considering the above situation, the conclusion of the Industrial Tribunal that the reference was not made by the competent authority is required to be upheld though for somewhat different reasons recorded hereinabove. The result of this conclusion would be that the order passed by the Industrial Tribunal under challenge is required to be and is hereby upheld.

14. As noted earlier, I have already concluded that the failure report submitted by the Conciliation Officer suffered from no legal defect. The Government would, therefore, proceed further from the stage of taking into

account the failure report submitted by the Conciliation Officer and take a decision regarding making a reference to the appropriate Labour Court/Industrial Tribunal within a period of two months from the date of receipt of a copy of this order. If the State Government ultimately decides to make a reference, considering the fact that substantial time has been lost in initiating the proceedings, if the petitioner makes an application to the appropriate Labour Court/Industrial Tribunal for expediting the reference, the same shall be considered sympathetically.

15. With these directions, the petition is disposed of. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)